

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 06, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NEW CINGULAR WIRELESS PCS,
LLC, D/B/A AT&T MOBILITY, a
Delaware limited liability company,

Plaintiff,

v.

CITY OF WALLA WALLA,
Defendant.

No. 4:23-CV-05162-SAB

**ORDER GRANTING IN PART
AND DENYING IN PART
STIPULATED MOTION FOR
PARITAL DISMISSAL AND
DIRECTING FILING OF
AMENDED COMPLAINT BY
MARCH 12, 2024**

ECF No. 24

Before the Court is the parties' Stipulated Motion for Partial Dismissal of the "Second Count" in the Complaint asserting a substantial evidence requirement claim under 47 U.S.C. § 332(c)(7)(B)(iii), ECF No. 24. The parties have filed the stipulation pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) seeking dismissal of just one of the claims with prejudice and without fees or costs. *See* ECF No. 24 at 2. However Rule 41 does not permit dismissal of fewer than all of the claims against a party. *See Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) ("The fact that a voluntary dismissal of a claim

ORDER- 1

1 under Rule 41(a) is properly labeled an amendment under Rule 15 is a technical,
2 not a substantive distinction.”); *Gen. Signal Corp. v. MCI Telecomms. Corp.*, 66
3 F.3d 1500, 1513 (9th Cir. 1995) (“[W]e have held that Rule 15, not Rule 41,
4 governs the situation when a party dismisses some, but not all, of its claims.”);
5 *Ethridge v. Harbor House Rest.*, 861 F.2d 1389, 1392 (9th Cir. 1988). A district
6 court may, however, construe such a stipulation as an unopposed request to amend
7 the complaint and withdraw the claim in question under Rule 15(a). *See Hells*
8 *Canyon Pres. Council*, 403 F.3d at 688–89. The court construes the stipulation in
9 this way and grants the request to amend under Rule 15(a).

10 Accordingly, **IT IS HEREBY ORDERED:**

11 1. The parties’ Stipulated Motion for Partial Dismissal, **ECF No. 24**, is
12 **GRANTED IN PART and DENIED IN PART.**

13 2. The Court construes the stipulation as an unopposed request to amend
14 the Complaint. Plaintiff shall file an amended complaint omitting the Second
15 Count by not later than **March 12, 2024**. The amended complaint shall conform
16 precisely with the parties’ stipulation and shall not add other allegations, claims or
17 parties without leave of Court.

18 3. Upon filing of the amended complaint, Defendant’s Motion for Partial
19 Summary Judgment, ECF No. 23, which only pertains to the Second Count of the
20 Complaint, will be denied as moot. All current deadlines and the hearing
21 associated with the Motion for Partial Summary Judgment are **STRICKEN.**

ORDER- 2

1 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
2 file this Order and provide copies to counsel.

3 **DATED** this 6th day of February 2024.



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8 Stanley A. Bastian
9 United States District Judge
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